

In the Matter of)
)
Rural Call Completion) WC Docket No. 13-39

³ See *Rural Call Completion*, Second Report and Order and Third Notice of Proposed Rulemaking, WC Docket No. 13-39 (rel. April 17, 2018) (“*Rural Call Completion Order*”).

With respect first to the requirement that Covered Providers directly monitor downstream intermediate providers, USTelecom misstates the scope of the requirement in seeking reconsideration of it. As an initial matter, the Commission could not have been clearer about the “flexibility” it was affording Covered Providers in relieving them of reporting requirements and adopting new monitoring rules instead.⁴ Moreover, the Commission made quite clear that *direct* monitoring did not mean that “active” monitoring was required throughout the call flow; rather, the Commission took great care to explain that what it meant by *direct* (or “active”) monitoring was that a Covered Provider could not rely *solely* on contractual provisions to monitor Intermediate Providers (including those with which it was directly interconnected).⁵ Indeed, the Commission stated expressly that:

[A] covered provider may manage the call path through (i) direct monitoring of all intermediate providers; or (ii) a combination of direct monitoring of contracted intermediate providers and contractual restrictions on directly monitored intermediate providers that are reasonably calculated to ensure rural call completion through the use of any further intermediate providers.⁶

Thus, it is unclear exactly why USTelecom seeks reconsideration – there is no requirement whatsoever given the patently disjunctive statement above that would compel a Covered Provider to “observe the performance of Intermediate Providers with whom they do not have direct interconnections.”⁷ A Covered Provider can certainly choose to do so if it wants to pursuant to the

⁴ *Rural Call Completion Order*, at ¶ 34.

⁵ *Id.* at n. 112.

⁶ *Id.* at ¶ 34 (emphasis added); *see also id.* at ¶ 35 (“[B]ecause we are able to require covered providers to exercise responsibility for the performance of the entire intermediate provider call path while providing significant flexibility in how they do so, we find mandating direct covered provider monitoring of the entire call chain unnecessarily burdensome. . . . Similarly, we do not mandate that covered providers must directly contract with all intermediate providers in the call path.”)

⁷ Petition at 4.

first clause, and some Covered Providers may want to do so where possible since USTelecom admits that Covered Providers rightly remain the “central party responsible for call completion” and “bear ultimate responsibility for ensuring that their customers’ calls are completed.”⁸ But nothing in the *Rural Call Completion Order* compels any Covered Provider to monitor *directly* any and all downstream Intermediate Providers because of the “flexibility” afforded already by the Commission, and for that reason, reconsideration is unwarranted and unnecessary.

This then advances the discussion to the second part of USTelecom’s request for reconsideration – a challenge to the concept that Covered Providers should bear even the basic responsibility to compel contractual “flow-down” of clauses through directly interconnected Intermediate Providers to promote monitoring and call completion. Here, USTelecom contends that requiring modifications to a Covered Provider’s contracts with its directly connected Intermediate Providers to achieve such a pass-through of duties is logistically problematic because this requires renegotiation of existing contracts.⁹ As an initial matter, this same argument was raised in the notice-and-comment phase of the rulemaking and rightly and squarely rejected by the Commission.¹⁰ Moreover, eliminating this basic obligation would result in what amounts to the “nothing” portion of an “all-or-nothing” approach, as the Commission characterized it, wherein a Covered Provider could seek to disavow responsibility for downstream failures because it did “all it could” to engage otherwise in “reasonable monitoring efforts” with those Intermediate Providers that it could identify.¹¹ Particularly in light of the Commission’s generous grant of a six month

⁸ *Id.* at 3 (quoting *Rural Call Completion Order*, at ¶ 12).

⁹ Petition at 6.

¹⁰ *Rural Call Completion Order*, at ¶ 35 and n. 118 (citing Comments of NCTA-The Internet & Television Association, WC Docket No. 13-39, at 6).

¹¹ *Rural Call Completion Order*, at ¶¶ 34-35.

window to implement the new monitoring rules (despite the immediate elimination of the reporting requirements),¹² Covered Providers have ample time to establish the contractual provisions necessary to avoid “an unreasonable compliance trap”¹³ – and, if a Covered Provider somehow still finds itself unable to reach agreement with one or more of its directly interconnected Intermediate Providers after six months of discussion over just a single contract clause, it could at that time request a waiver and present whatever good cause exists to justify an extension of time.¹⁴

For the foregoing reasons, the Petition for Reconsideration filed by USTelecom should be denied.

Respectfully submitted,

NTCA–THE RURAL BROADBAND ASSOCIATION

By: /s/ Michael R. Romano

Michael R. Romano

Senior Vice President – Industry Affairs & Business
Development

By: /s/ Jill Canfield

Jill Canfield

Vice President – Legal & Industry
Assistant General Counsel

jcanfield@ntca.org

4121 Wilson Blvd, 10th Floor
Arlington, VA 22203
(703) 351-2000

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¹² *Id.* at ¶ 50.

¹³ Petition at 6.

¹⁴ Of course, the refusal of an Intermediate Provider to agree to such contractual provisions might itself call into question the commitment of that provider to call completion, and provide cause for the Covered Provider to seek other alternatives. Moreover, in a competitive marketplace such as call routing where traffic is often dynamically routed and rerouted, it is hard to foresee any Intermediate Provider refusing to incorporate such clauses into a contract at the request of Covered Providers; indeed, in some cases, a “change-of-law” clause often found in many telecom contracts may even compel the Intermediate Provider to accept such provisions.